CR/1004 (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 825 OF 2004

BETWEEN

Shiv Kumar Dwivedi S/o Shri Ramanand Dwivedi, aged about 40 years, Resident of House No.821, Sitabund, Sultanpur (U.P.)

PETITIONER

A N D

1. The State of Chhattisgarh, Through the Secretary Department of Home, Mantralay, D.K.S. Building, Raipur , Tehsil and District Raipur (CG).

2. The Superintendent of Police, Sarguja, District Ambikapur (CG).

3. Station House Officer, Police Station, City Kotwali, Surguja, District Ambikapur (CG).

4. The Superintendent, District Jail, Sultanpur, District Sultanpur (UP).

26/12/2003
CJM

P.R. No. 810/04
Presented by Shri Ashish Shrivastava
dated 16.03.04

RESPONDENTS

HABEAS CORPUS PETITION UNDER ARTICLE 226 READ WITH ARTICLE 32 OF CONSTITUTION OF INDIA

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आदेश पत्रक

मामला क्रमांक W.P. NO. 825/04 **सन् 200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench :
Hon'ble Shri A.K. Patnaik, C.J. &
Hon'ble Shri Fakhruddin, J.

16-03-2005

Heard Mr. Shailendra Dubey, learned counsel for the petitioner and Mr. Pramod Verma, learned Additional Advocate General for the State of Chhattisgarh.

This is a habeas corpus petition for release of Shubhkaran Dwivedi, brother of the petitioner. The facts as stated in the petition are that Shubhkaran Dwivedi who was in District Jail, Sultanpur (Uttar Pradesh) was produced before the learned Chief Judicial Magistrate, Ambikapur, on 26-12-2003 in connection with crime No.416/2003 under Sections 302, 201, 120-B of the Indian Penal Code and Sections 25/27 of the Arms Act registered at Police Station City Kotwali, Ambikapur (Chhattisgarh). Thereafter, the Chief Judicial Magistrate sanctioned the police remand of Shubhkaran Dwivedi up to 30-12-2003 and thereafter extended the remand up to 5-1-2004 and fixed 19-1-2004 for his production but he was not produced by the Police before the learned Chief Judicial Magistrate.

Mr. Dubey, learned counsel for the petitioner submitted that under Section 167 of the Code of Criminal Procedure, the Magistrate has to authorize the detention of an accused person for any particular period and in the absence of such

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मामला क्रमांक W.P.No. 825/2004 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

authorization by the Magistrate, the detention of the accused will be illegal. He submits that in this case the detention of Shubhkaran Dwivedi was authorised by the Chief Judicial Magistrate only up to 19-1-2004 and any detention of Shubhkaran Dwivedi beyond 19-1-2004 is illegal.

On 17-1-2005, this Court after perusing the letter dated 14-6-2004 sent by the Superintendent, District Jail, Sultanpur (Uttar Pradesh)-respondent No.4, directed the Registry of this Court to send communication to the Superintendent, District Jail, Sultanpur (Uttar Pradesh)-respondent No.4 asking him to send full facts of the case in which Shubhkaran Dwivedi is languishing in jail of Sultanpur (Uttar Pradesh) and pursuant to the said order dated 17-1-2005, the respondent No.4 has communicated some copies of papers which show that Shubhkaran Dwivedi has been detained in custody at Sultanpur Jail in connection with several criminal cases.

Mr. Dubey, learned counsel for the petitioner submits that in the event Shubhkaran Dwivedi is released from custody in connection with the aforesaid cases pending in Uttar Pradesh, he may not be released from custody on account of Crime No. 416/2003 under Sections 302, 201, 120-B of I.P.C. and Sections 25/27 of the Arms Act even though no order has been passed by the learned Chief

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Judicial Magistrate, Ambikapur, authorizing the detention of Shubhkaran Dwivedi beyond 19-1-2004.

We find a lot of force in the aforesaid submission of Mr. Dubey. The record of the learned Chief Judicial Magistrate, Ambikapur has been called for and is before this Court. We called upon Mr. Pramod Verma, learned Additional Advocate General to go through the said records and tell the Court as to whether any order has been passed by the Chief Judicial Magistrate from which the Court can come to the conclusion that the detention of Shubhkaran Dwivedi has been authorised beyond 19-1-2004.

Mr. Verma, learned Additional Advocate General submitted that the records of the Chief Judicial Magistrate produced before the Court would show that the Chief Judicial Magistrate has passed orders for production of Shubhkaran Dwivedi in connection with crime No.416/2003 but despite the said orders passed by the Chief Judicial Magistrate, Ambikapur, Shubhkaran Dwivedi is not being produced before the Chief Judicial Magistrate. According to Mr. Verma, the fact that orders have been passed by the Chief Judicial Magistrate, Ambikapur for production of Shubhkaran Dwivedi would show that the detention of Shubhkaran Dwivedi has been authorised by the Magistrate beyond 19-1-2004.

On a perusal of the records of Chief Judicial Magistrate in crime No.416/2003 it appears to us that no express order

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

has been passed by the Magistrate for detention of Shubhkaran Dwivedi beyond 19-1-2004. However, orders have been passed by the Chief Judicial Magistrate from time to time for production of Shubhkaran Dwivedi before the Chief Judicial Magistrate, Ambikapur in connection with crime No. 416/2003. Till now the said order for production of Shubhkaran Dwivedi before the Chief Judicial Magistrate, Ambikapur, has not been complied with and it appears from the documents filed by the respondent No.4 before us that this is because of the fact that Shubhkaran Dwivedi is now in custody in connection with other cases in Courts in Uttar Pradesh and the Courts of Uttar Pradesh have been passing orders from time to time regarding detention of Shubhkaran Dwivedi. As and when Shubhkaran Dwivedi is produced pursuant to the orders passed by the Chief Judicial Magistrate, Ambikapur, before the Court in connection with crime No.416/2003, it will be always open for Chief Judicial Magistrate, Ambikapur, to pass appropriate orders authorizing the detention of Shubhkaran Dwivedi in accordance with law. As yet as the position stands all that we see, orders have been passed by the Chief Judicial Magistrate, Ambikapur for production of Shubhkaran Dwivedi before the Court in connection with the aforesaid case.

In any case, at this stage no relief for release of Shubhkaran Dwivedi from the District Jail, Sultanpur (Uttar

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Pradesh) can be passed by this Court in this habeas corpus petition as he appears to be detained in custody in the District Jail, Sultanpur (Uttar Pradesh) in connection with other criminal cases pending in the Courts in Uttar Pradesh.

With the aforesaid observations, this habeas corpus petition stands disposed of.

The records of the Chief Judicial Magistrate, Ambikapur, be sent back forthwith.

Sd/-
Chief Justice

Sd/-
Fakhruddin
Judge

Pathak

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